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Attorneys for Plaintiff Lisa S. Black

**IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

| | | |
|--|---|-----------------------------------|
| LISA S. BLACK, |) | CIVIL ACTION NO. 05-0038 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | REPLY TO DEFENDANT CNMI |
| |) | PUBLIC SCHOOL SYSTEM'S |
| JIM BREWER, individually and in his |) | OPPOSITION TO MOTION IN |
| official capacity as Acting Principal for |) | LIMINE TO PRECLUDE |
| Hopwood Junior High School, |) | INTRODUCTION OF IRRELEVANT |
| COMMONWEALTH OF THE NORTHERN |) | PREJUDICIAL CHARACTER |
| MARIANA ISLANDS PUBLIC SCHOOL |) | EVIDENCE |
| SYSTEM, and JOHN AND/OR JANE DOE, |) | |
| |) | |
| Defendants. |) | |

**I.
PSS MISUNDERSTANDS RULE 404**

The CNMI Public School System ("PSS") has opposed Plaintiff's motion in limine to exclude character evidence because, according to PSS, "character evidence is admissible to show action in conformity with that character." Defendant CNMI Public School System's Opposition to Motion In Limine To Preclude Intervention of Irrelevant, Prejudicial Character Evidence, filed February 14, 2007 ("PSS's Opposition") at p. 2, 1. 18. Rule 404 specifically states that character evidence is "not admissible for the purpose of proving action in conformity

1 therewith,” with only three exceptions. The first two exceptions deal with *criminal cases* and
2 are not applicable here. The third exception deals with the credibility of a witness who testifies
3 and permits the admission character evidence bearing on the truthfulness of that witness. The
4 character evidence in issue here involves allegedly showing up late to classes, taking
5 unauthorized leave, and being argumentative and otherwise insubordinate. The character
6 evidence in issue here does not related to the truthfulness of the Plaintiff. Therefore, Plaintiff’s
7 motion should be granted.
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10 **II.**
11 **PSS MISSES THE MARK ON THE BLACK LISTING CLAIM**

12 PSS argues that “character evidence is relevant as to why other principals did not hire
13 the Plaintiff.” PSS’s Opposition at p. 3, 1. 21. Plaintiff doubts this is true but what PSS
14 intends to do and what Plaintiff has objected to is the calling of witnesses to testify as to
15 Plaintiff’s poor performance at other schools. Questioning the principals at the schools Plaintiff
16 applied to as to why they did not hire her is not objected to. Presenting evidence of how
17 Plaintiff allegedly behaved at other schools is what Plaintiff seeks to exclude.
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20 If a principal testifies that he or she decided not to hire Lisa Black because she came
21 late while working at a school other than at Hopwood, Plaintiff can deal with that testimony
22 through cross examination. What is objected to is parading teachers or administrations before
23 the jury to testify that Lisa showed up for work late at those schools, was argumentative or took
24 unauthorized leave, and was otherwise insubordinate at those other schools. The witnesses who
25 only have testimony about how Plaintiff behaved at other schools do not have relevant or
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1 admissible evidence. All they offer is inadmissible character evidence as to how the Plaintiff
2 may have behaved in the past.

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4 **III.**
5 **WHAT IS RELEVANT IS THE ACTIONS THE DEFENDANTS TOOK**
6 **AFTER OCTOBER 6, 2004**

7 Plaintiff concedes that her past performance at other schools *could* be relevant as to
8 why her contract with Hopwood was not renewed except that PSS has already testified that it
9 was not considered. No incident prior to April, 2004, when Plaintiff was already at Hopwood,
10 was considered with regard to her nonrenewal. PSS made this clear in answer to Interrogatory
11 Number 3 served on May 15, 2006.¹

12
13 Lisa's actual conduct at Kagman Elementary School and other schools is not at issue.
14 The truth or falsity of whether she came late to those schools or was insubordinate while there
15 is not at issue. Evidence bearing on Lisa's behavior at the other schools is inadmissible
16 character evidence and should be excluded. Plaintiff's motion in limine should be granted.

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19 Dated : February 15, 2007

Respectfully submitted,

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21 O'CONNOR BERMAN DOTTS & BANES
22 Attorneys for Plaintiff Lisa Black

23
24 By: _____/s/_____
Michael W. Dotts, Esq.

25 _____
26 ¹ Plaintiff asserts that the nonrenewal of her Hopwood contract was done to inflict emotional distress upon her and
27 was outrageous because it was so out of line with PSS policies and procedures. The court has ruled that the
28 nonrenewal is not actionable as a violation of civil rights but it remains actionable as an intentional infliction of
emotional distress and as imposing a stigma and a disability upon her.

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